IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 3 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CONTROLLER OF ESTATE DUTY

Versus

LALITKUMAR SAVJIBHAI, A P OF VALLABHJI RATANSHI

Appearance:

1. ESTATE DUTY REFERENCE No. 3 of 1994
MR PRANAV G DESAI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 04/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion :-

"(1) Whether, the Appellate Tribunal is right in law and on facts in directing the Assistant Controller of Estate Duty to make valuation of the house property in accordance with Rule 1BB of the Wealth Tax Rules ?

(2) Whether, the Appellate Tribunal is right in law and on facts in holding that as regards the deduction of the debt of Rs.3,14,345/- there was no encumbrance or charge on the house property in question in respect of this debt and consequently deduction in respect of this debt would be allowable from the aggregate value of the property passing on death and not only from house property as contended by the department ?"

2. The facts leading to this reference, as found in the statement of case drawn by the Tribunal, are as under:-

The name of the deceased was Shri Vallabhji Ratanshi. The date of his death was 22.10.1984. The deceased has constructed a house and that house was one of the properties which passed on his death. The deceased had withdrawn Rs.3,14,345/- from the firm of M/s Vallabhji Rantanshi & Sons of which he was a partner and had invested the same in the construction of the said house. The accountable person made valuation of the said house property in accordance with the provisions of Rule 1 BB of the Wealth-tax Rules, 1957 at Rs.51,188/- and claimed exemption under Section 33(1)(n) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"). The accountable person also claimed deduction of Rs.3,14,345/- from the aggregate value of the property passing on death under Section 44 of the Act. The Assistant Controller of Estate Duty observed that the said building had been constructed a short time before the death of the deceased for Rs.3,14,345/-. He accordingly valued the said property at Rs.3,14,345/- as against Rs.51,188/- valued by the accountable person. He granted deduction of Rs.3,14,345/- from the value of the house and, therefore, value of the said property came to Nil. Consequently, the deduction under Section 33(1)(n) was not given.

The accountable person filed an appeal before the Controller of Estate Duty (Appeals) who held that the deduction under Section 44 in respect of the debt of

Rs.3,14,345/- was allowable only from the value of the house property and not from the aggregate value of the entire property passing on death. He held that the house property had been correctly valued at Rs.3,14,345/- and that there was no question of grant of deduction under Section 33(1)(n) of the Act.

The accountable person when in appeal before the Tribunal. The Tribunal observed that one of the two grounds raised by the accountable person pertained to value to be adopted in respect of the house property. The Tribunal relied on the decision of the Bombay High Court in Jehangir Mohmedali Chagla vs. Addl. First ACED, (1985) 155 ITR 637 in which the Bombay High Court had held that the residential property of the deceased should be valued in accordance with Rule 1BB of the Wealth-tax Rules, 1957 in estate duty proceedings. The Tribunal noted that in the wealth-tax proceedings this very property had been valued in accordance with Rule 1BB and that there was no reason why the value of the same house in estate duty proceedings should be more than the value in the wealth-tax proceedings for wealth-tax purpose. The Tribunal accordingly directed the Assistant Controller of Estate Duty to make valuation in accordance with Rule 1BB.

As regards deduction of the debt of Rs.3,14,345/-, the Tribunal found that there was no encumbrance or charge on the house property in question in respect of the said debt and hence, deduction in respect of that debt would be allowable from the aggregate value of the property passing on death. The Tribunal consequently rejected the plea of the department that the deduction in respect of the said debt was allowable only from the value of the house property in question and not from the aggregate value of the entire property passing on death.

3. We have heard Mr Pranav G Desai, learned standing counsel for the revenue. Though served, none appears for the respondent-accountable person.

4. As far as question No. 1 is concerned, Mr Desai has submitted that the Tribunal has erred in directing the Assistant Controller of Estate Duty to make valuation of the house property in accordance with Rule 1BB of the Wealth Tax Rules; when Rule 14 of the Estate Duty Rules, 1952 (hereinafter referred to as "the Rules") specifically empowers the Controller himself to place a valuation on the property on his own estimate or appoint a person to appraise such properties and to set the

valuation thereon. The Controller is not bound to accept the valuation as shown in the account delivered by the accountable person. Mr Desai has further submitted that Rule 14 was not considered by the Bombay High Court while relying on the decision in Jehangir Mohmedali Chagla vs. Addl. First ACED, (1985) 155 ITR 637.

5. We have carefully considered the submission of Mr Desai. The submission is, of course, prima facie quite attractive, but on closer scrutiny the same is not required to be accepted. Section 36 of the Act provides how the principal value of any property is to be determined. Sub-section (1) empowers the Controller to estimate the principal value of any property which in the opinion of the Controller, would fetch the price if sold in the open market at the time of the deceased's death. Sub-section (3) of Section 36 reads as under :-

"36. Principal value how to be estimated.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the principal value of one residential house or part thereof belonging to the deceased (which the accountable person may at his option specify in writing in this behalf) shall be -

(a) where the value of such house or part is included in computing the net wealth of the deceased for the purposes of making an assessment under the Wealth-tax Act, 1957 (27 of 1957) (hereafter in this sub-section referred to as the Wealth-tax Act), in respect of his net wealth on the valuation date immediately preceding the date of his death, the value as taken by the Wealth-tax Officer for the purposes of such assessment; and

(b) in any other case, ...

Explanation 1 provides that where the value adopted is in accordance with the valuation under the Wealth-tax Act which is subsequently varied by an order in any proceeding under the Wealth-tax Act, the value earlier adopted under the Estate Duty Act shall be deemed to be a mistake apparent from the record and the Controller shall rectify the order accordingly. Explanation 2 provides that for the purposes of sub-section (3) of Section 36, the expressions "net

wealth", "valuation date" and "Wealth-tax Officer" shall have the same meanings as in the Wealth-tax Act.

On the other hand, Rule 14 of the Estate Duty Rules is a general Rule applicable to all properties and is framed under Section 41 of the Act. Section 41 reads as under :-

> "41. Valuation to be made by the Controller.- Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as may be prescribed and if he authorizes a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as may be prescribed."

Rule 14 is to be found in Part VI with the title "Valuation and Inspection of Property (Section 41)". Sub-rule (1) of Rule 14 reads as under :-

> "14. Valuation .- (1) The Controller may accept the valuation as shown in the account delivered by the accountable person or may, if he is not satisfied with the valuation shown therein, either himself place a valuation thereon on his own estimate or appoint a person to appraise such properties and to set the valuation thereof. The cost of any such professional assistance shall be defrayed by the Government."

6. A bare perusal of the aforesaid provisions makes it very clear that while sub-section (1) of Section 36 and Rule 14 of the Rules deal with all the properties generally, sub-section (3) of Section 36 specifically provides for valuation of "one residential house or any part thereof belonging to the deceased (which the accountable person may at his option specify in writing in this behalf) .... where the value of such house or part is included in computing the net wealth of the deceased for the purposes of making an assessment under the Wealth-tax Act, 1957 in respect of his net wealth on the valuation date immediately preceding the date of his death". In such a case, the valuation as taken by the Wealth-tax Officer for the purposes of the assessment under the Wealth-tax Act is the principal value of such residential house or part thereof. Sub-section (3) of Section 36 was inserted by Estate Duty (Amendment) Act, 1982 with effect from 1.3.1981.

The aforesaid legislative scheme, therefore, makes it mandatory for the authorities under the Estate Duty Act to adopt valuation of the property under the Wealth-tax Act in respect of one residential house belonging to the deceased (which is to be specified by the accountable person at his or her option) which is assessed to wealth tax on the valuation date immediately preceding the date of death of the owner of that house.

7. In the instant case, the date of death was 22.10.1984 and, therefore, the provisions of sub-section (3) of Section 36 were attracted. There is no dispute about the fact that the property in question was valued under the Wealth-tax Act at Rs.51,188/- on the last valuation date immediately preceding the date of death of Vallabhji Ratanshi and, therefore, the Tribunal rightly directed the Assistant Controller of Estate Duty to make the valuation of the house property in accordance with Rule 1BB of the Wealth-tax Rules. The decision of the Bombay High Court in Jehangir Mohmedali Chagla vs. Addl. First ACED, (1985) 155 ITR 637 was rightly relied upon by the Tribunal. As already indicated earlier, Rule 14 of the Rules generally applicable to all properties was not applicable in the facts of the instant case.

8. In view of the above discussion, our answer to question No.1 is in the affirmative i.e. in favour of the accountable person and against the revenue.

9. Coming to question No.2, the finding given by the Tribunal that there was no encumbrance or charge on the house property in question in respect of the debt of Rs.3,14,345/- is a finding of fact. In fact, it appears from the statement of case that the said amount of Rs.3,14,345/- was withdrawn by the deceased from the firm of M/s Vallabhji Ratanshi & Sons of which he was a partner and he had invested the same in the construction of the said house. It was not a loan taken by the deceased from any bank or a financial institution which had created any charge over the property constructed with the said funds. In this view of the matter, the Tribunal was justified in treating it as a general debt allowable from the aggregate value of the property which passed on death of the deceased.

In this view of the matter, we answer question No.2 also in the affirmative i.e. in favour of the accountable person and against the revenue.

10. The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)
sundar/-